REMARKS

This Application has been carefully reviewed in light of the Final Office Action dated September 17, 2008 (the "Final Office Action"). At the time of the Office Action, Claims 1-20 were pending, of which the Examiner rejected Claim 1-20. Applicants have amended Claims 1, and 9-10. Applicants have cancelled Claims 12-14 and present new Claims 21-23. Applicants represent that no new matter has been added Applicants respectfully request reconsideration and favorable action in this case.

Objections to the Specification

The Final Office Action objects to the Specification "as failing to provide proper antecedent basis for the claimed subject matter." Specifically, the Examiner objects to the use of "computer-readable medium" and "program storage device." Applicants respectfully traverse these rejections. However, in order to advance prosecution, Applicants have made an amendment to the claims that renders the objection to "computer-readable medium" moot.

It is not entirely clear whether the Examiner objects to the Specification, claims, or both. In any event, Applicant respectfully submits that the Specification provides adequate disclosure to support the term "program storage device."

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. 37 C.F.R. § 1.75(d)(1). The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import. M.P.E.P. ch. 608.01(o).

Applicants use of the term "program storage device" renders its meaning abundantly clear to one of ordinary skill in the art, both based on the ordinary meaning of the term itself and Applicants' Specification. For example, Applicants direct the Examiner to page 10, line 24-page 11, line 1 of the Specification. The tools are described as a "program of instructions stored on a machine readable medium." Applicants submit that this provides proper antecedent basis for the claimed subject matter. A person of ordinary skill in the art would understand that programs are stored on devices such as a machine readable medium. Accordingly, Applicants submit that at least the above section forms the basis for the claim terminology in the description as required by the M.P.E.P.

Objections to Claims 1, 3, 9, and 16

The Final Office Action objects to Claims 1, 3, 9, and 16 due to "informalities." The Office Action states that the phrase "operable to" suggests or makes optional but does not require the steps to be performed or does not limit a claim to a particular structure. The Examiner relies on M.P.E.P. ch. 2111.04 and 706.1 for this objection. The Examiner has suggested replacing the phrase "operable to" with "configured to." Applicants decline to do so at this time and respectfully traverse these objections.

Applicants believe the Examiner considers the phrase "operable to" to be similar to the "adapted to" clause discussed in ch. 2111.04 of the M.P.E.P. However, the M.P.E.P. states "[t]he determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case." When a "whereby clause states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention." (M.P.E.P. ch. 2111.04, citing *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005)). The analysis should be analogous for an "operable to" clause.

A claim element described as "operable to" perform certain functions covers operations that the element is capable of performing, and not just operations that the element may be capable of performing. The ordinary dictionary definition of "operable" is "practicable." *See, e.g.,* The American Heritage College Dictionary, 3rd Ed., Houghton Mifflin (1997). The dictionary definition of "practicable" is "capable of being affected, done or put into practice." *See id.* Thus, elements following the term "operable to" in a particular claim element constitute operations that the claim element is capable of performing. Operations that a claim element is capable of performing are limitations because the element is thus distinguished from the prior art that is not capable of performing the operations.

Additionally, "operable to" is a commonly used term in patent application claims and is present in claims of numerous patents issued by the United States Patent and Trademark Office. An informal search of the USPTO's website (performed October 28, 2008) returned well over 150,000 issued patents with claims reciting the phrases "operable to" or "being operable to." Applicant respectfully contends that use of the phrase "operable to" is proper. In short, use of the phrase "operable to" in claims is a practice that is both well accepted and currently supported by the PTO. To the extent that the Examiner intends to maintain his position with respect to the phrase "operable to," Applicant respectfully requests the Examiner to provide support from applicable authority, such as case law or statutes.

For at least these reasons, Applicant respectfully submits that the use of the phrase "operable to" in Claims 1, 3, 9, and 16 does not render these claims indefinite and requests that the objections to these claims be withdrawn.

Objections to Claims 1, 12, 13, and 14

The Final Office Action objects to Claim 1 because it is directed toward an apparatus, but the Examiner asserts that software stored on a medium is an article of manufacture, not a apparatus. Applicants do not believe that the distinction the Examiner is attempting to draw between an apparatus and an article of manufacture exists. Accordingly Applicants decline to amend Claim 1. Applicants note that both apparatuses and articles of manufacture are statutory subject matter under 35 U.S.C. § 101. To the extent the Examiner intends to maintain this objection, Applicants request the Examiner provide some statutory or case law support for the objection.

The Office Action objects to Claims 12, 13, and 14 under 37 C.F.R. 1.75 (c) as being in improper dependent form because the claims fail the Infringement Test. Applicants have cancelled Claims 12-14 rendering this objection moot.

Section 102 Rejections

The Final Office Action rejects Claims 1-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,122,639 to Babu et al. ("*Babu*"). Applicants respectfully traverse these rejections.

Claim 1 is directed to an apparatus for network management in a heterogeneous environment, including a relational mapper that is operable *to translate* the relational query received through the relational interface from the software application to *native protocol messages* according to an access protocol associated with the network device. *Babu* does not disclose each of these limitations.

The Office Action relies on the description of the collection engine of *Babu* as disclosing the relational mapper of Claim 1. (Final Office Action at 6). The Examiner cites Figures 1 and 2, column 1, line 23, and column 7 lines 24-32 at allegedly disclosing this limitation. This, however, is incorrect.

Relational mapping in *Babu* is disclosed as mapping "device type identifiers" to "device classes in a device class table." (*Babu* column 8, lines 43-44). A device class is a broader group of devices that support similar MIB objects. Examples of device classes include "cisco router" and "switches." (*Babu* column 8, lines 47-48). Thus it is clear that the

relational mapping is between a device and its class and not operable to *"translate* the relational query received through the relational interface from the software application to *native protocol messages* according to an access protocol associated with the network device" as recited in Claim 1.

Even if Applicants were to concede for the sake of argument only that the collection engine, including database with the device type identifier to device class mapping were equivalent to the relational mapper in Claim 1 (a point which Applicants certainly do not concede), the relational mapper would still not disclose, teach or suggest *"translat[ing]* the relational query received through the relational interface from the software application to *native protocol messages* according to an access protocol associated with the network device" as recited in Claim 1. For example, the collection engine of *Babu* is "initiated by supplying a device name and other information with which the collection engine can locate a device, such s SNMP community strings." (*Babu* column 7, lines 20-24). The collection engine in response to the request "sends an SNMP message over the network to the network device." (*Babu* column 7, lines 32-32). The cited portions do not disclose any translation of a relational query through the relational interface from the software application to native protocol messages according to an access protocol associated with the network device. Rather, the cited portions indicate that SNMP is used throughout the process.

For at least these reasons, *Babu* does not disclose the apparatus of Claim 1 including, for example, the relational mapper that is operable to translate the relational query received through the relational interface from the software application to native protocol messages according to an access protocol associated with the network device. Therefore, Applicants respectfully request that the rejection of Claim 1 be withdrawn.

Claims 2-8 and 15-16 each depend, either directly or indirectly from Claim 1. Therefore, for at least the reasons discussed above with regard to Claim 1, Applicants respectfully request that the rejections of Claims 2-8 and 15-16 be withdrawn.

Similar to Claim 1, Claims 9-11 include limitations related to handling the native protocol messages as a transaction with the network device. For at least those reasons discussed above with regard to Claim 1, Applicants respectfully contend that *Babu* does not disclose each of these limitations. Therefore, Applicants respectfully request that the rejection of Claims 9-11 be withdrawn.

Claims 12-14 and 17-20 each depend, either directly or indirectly from Claims 10 and 11, respectively. Therefore, for at least the reasons discussed above with regard to Claim 1, Applicants respectfully request that the rejections of Claims 12-14 and 17-20 be withdrawn.
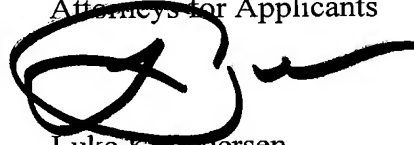
Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge **$660.00** for the addition of three independent claims, and to the extent necessary, charge any additional fees or credit any overpayments to **Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.**

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

Luke K. Pedersen
Reg. No. 45,003
PHONE: (214) 953-6655

Date: November __17__, 2008

CORRESPONDENCE ADDRESS:

Customer Number: **05073**